

1 TIMOTHY PERLA (*pro hac vice* pending)
 2 timothy.perla@wilmerhale.com
 3 WILMER CUTLER PICKERING
 4 HALE AND DORR LLP
 5 60 State Street
 Boston, MA 02109
 Telephone: (617) 526-6000
 Facsimile: (617) 526-5000

6 JESSICA LEWIS (SBN 302467)
 7 jessica.lewis@wilmerhale.com
 8 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 One Front Street, Suite 3500
 9 San Francisco, CA 94111
 Telephone: (628) 235-1160
 Facsimile: (628) 235-1001

11 *Attorneys for Defendant*
 12 *Life Insurance Company of the Southwest*

13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 Scott Hoffman, Barry Blisten, Deann Fallas,
 16 Gerry Oxx, Damon Stokes, Susan Strozewski,
 Sarah White, and Maria De Altonaga,
 17 individually and as representatives of the
 Class,

18 Plaintiffs,

19 vs.

20 Life Insurance Company of the Southwest,

21 Defendant.

22 Case No. 5:23-cv-04068

23 **DEFENDANT'S NOTICE OF REMOVAL
 24 AND REMOVAL OF ACTION UNDER
 25 28 U.S.C. §§ 1332(d)(2) AND 1441**

26 State Court Docket: Superior Court of the
 27 State of California, County of Santa Clara,
 Case No. 23CV418236

28 Complaint Filed: June 26, 2023

1 **TO THE CLERK OF THE COURT:**

2 **PLEASE TAKE NOTICE THAT**, for the reasons stated below, Defendant Life
 3 Insurance Company of the Southwest (“LICS”)¹ hereby removes the above-captioned action from
 4 the Superior Court of California for the County of Santa Clara to the United States District Court
 5 for the Northern District of California.

6 As grounds for removal, LICS states as follows:

7 **SUMMARY**

8 1. A defendant may remove an action from state court pursuant to 28 U.S.C. § 1441(a)
 9 if the federal district court has original jurisdiction over the action.

10 2. This Court has original jurisdiction over this action as an alleged class action in
 11 which “any member of a class of plaintiffs is a citizen of a State different from any defendant” and
 12 in which “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest
 13 and costs.” 28 U.S.C. § 1332(d)(2). Such actions may be removed from state court pursuant to
 14 28 U.S.C. § 1453(b).

15 **PROCEDURAL HISTORY AND BACKGROUND**

16 3. On June 26, 2023, Plaintiffs Scott Hoffman, Barry Blisten, Deann Fallas, Gerry
 17 Oxx, Damon Stokes, Susan Strozewski, Sarah White, and Maria De Altonaga (collectively,
 18 “Plaintiffs”) filed a putative class action complaint captioned *Hoffman, et al. v. Life Insurance*
 19 *Company of the Southwest* in the Superior Court of California in the County of Santa Clara. True
 20 and correct copies of all process, pleadings, and orders filed in the state court action are attached
 21 hereto:

22 a. EXHIBIT A: A true and correct copy of the state court docket sheet.
 23 b. EXHIBIT B: A true and correct copy of the complaint.
 24 c. EXHIBIT C: A true and correct copy of the civil case cover sheet.
 25 d. EXHIBIT D: A true and correct copy of the summons.

27 ¹ Plaintiffs’ complaint refers to Defendant Life Insurance Company of the Southwest as “LSW.”

e. EXHIBIT E: A true and correct copy of the proof of initial service.

4. In the complaint, Plaintiffs allege that LICS “charg[ed] teachers millions of dollars in undisclosed and unauthorized fees on their supplemental retirement savings plans” in violation of Cal. Educ. Code § 25100, *et seq.* Compl. ¶ 1. The complaint asserts, on behalf of a putative class, claims for violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code, § 17200, *et seq.* (the “UCL”). *Id.* at ¶¶ 138-155. Plaintiffs seek restitution, attorneys’ fees and costs, and equitable relief. *Id.* at 31. LICS disputes the allegations in the complaint and disputes that Plaintiffs are entitled to any relief.

5. Plaintiffs served LICS with the complaint and summons on July 12, 2023. LICS's time to respond to the complaint and summons has not expired, and LICS has not served or filed an answer. *See Proof of Initial Service, Hoffman, et al. v. Life Insurance Company of the Southwest, No. 23CV418236 (Cal. Sup. Ct., Santa Clara County) (July 13, 2023).*

6. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b) because it is filed within 30 days from July 12, 2023, the date which LICS was served with a copy of the complaint and summons. No previous Notice of Removal has been filed or made to this Court for the relief sought herein.

7. This action is removable to this Court because the County of Santa Clara is located within the Northern District of California. *See* 28 U.S.C. § 1441(a).

GROUND FOR REMOVAL

8. A defendant may remove an action from state court if the federal district court has original jurisdiction over the action. 28 U.S.C. § 1441(a).

9. This Court has original jurisdiction over this action under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).

10. CAFA vests federal district courts with “original jurisdiction of any civil action” (A) that “is a class action,” (B) in which “the number of members of all proposed plaintiff classes in the aggregate is [not] less than 100,” (C) in which “any member of a class of plaintiffs is a citizen of a State different from any defendant”; and (D) in which “the matter in controversy

1 exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d).

2 This action satisfies these requirements.

3 **A. This Action Is A Putative Class Action**

4 11. Original jurisdiction under CAFA applies to any civil action that “is a
 5 class action.” 28 U.S.C. § 1332(d)(2). A “class action” means “any civil action
 6 filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute
 7 or rule of judicial procedure authorizing an action to be brought by 1 or more representative
 8 persons as a class action.” *Id.* § 1332(d)(1)(B).

9 12. California Code of Civil Procedure § 382 provides in part that “when the question
 10 is one of a common or general interest, of many persons, or when the parties are numerous, and
 11 it is impracticable to bring them all before the court, one or more may sue or defend for the
 12 benefit of all.” Section 382 is the California state analog to Federal Rule of Civil Procedure 23.

13 13. Plaintiffs bring their claims on behalf of themselves individually and a class
 14 consisting of “[a]ll public employees of all California local school districts, community college
 15 districts, county offices of education, and state employees of a state employer under the uniform
 16 state payroll system, excluding the California State University System, eligible to participate in
 17 an annuity contract and custodial account as described in Section 403(b) of the Internal Revenue
 18 Code of 1986 that, in the four years predating the filing of this Complaint and continuing through
 19 the date the class list is prepared, who were invested in an indexed annuity 403(b) product issued
 20 by Defendant and who paid fees that were not properly disclosed on 403bcompare.com.”
 21 Compl. ¶ 129. This action is therefore a putative class action removable under CAFA under 28
 22 U.S.C. § 1332(d)(2).

23 **B. The Putative Class Exceeds 100**

24 14. Under 28 U.S.C. § 1332(d)(5)(B), the number of members of all proposed
 25 plaintiff classes must equal or exceed 100 in the aggregate for the action to be removable under
 26 CAFA.

1 15. In their complaint, Plaintiffs propose to represent a class consisting of “[a]ll
 2 public employees of all California local school districts, community college districts, county
 3 offices of education, and state employees of a state employer under the uniform state payroll
 4 system, excluding the California State University System, eligible to participate in an annuity
 5 contract and custodial account as described in Section 403(b) of the Internal Revenue Code of
 6 1986 that, in the four years predating the filing of this complaint and continuing through the date
 7 the class list is prepared, who were invested in an indexed annuity 403(b) product issued by
 8 Defendant” and who allegedly “paid fees that were not properly disclosed on
 9 403bcompare.com[,]” which Plaintiffs allege amounts to “hundreds or thousands of class
 10 members.” Compl. ¶¶ 129, 131.

11 16. Moreover, LICS’s records confirm that the putative class, as defined, would
 12 exceed 100.

13 17. The proposed class is thus sufficiently numerous under 28 U.S.C.
 14 § 1332(d)(5)(B).

15 **C. There Is Diversity Of Citizenship Between The Parties**

16 18. A putative class action is removable if “any member of a class of plaintiffs is a
 17 citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

18 19. Plaintiff Scott Hoffman is a resident of San Jose, California. Compl. ¶ 17.

19 20. Plaintiff Barry Blisten is a resident of Lake View Terrace, California. Compl.
 20 ¶ 19.

21 21. Plaintiff Deann Fallas is a resident of Bakersfield, California. Compl. ¶ 21.

22 22. Plaintiff Gerry Oxx is a resident of Signal Hill, California. Compl. ¶ 23.

23 23. Plaintiff Damon Stokes is a resident of Norwalk, California. Compl. ¶ 25.

24 24. Plaintiff Susan Strozewski is a resident of Orange, California. Compl. ¶ 27.

25 25. Plaintiff Sarah White is a resident of Pasadena, California. Compl. ¶ 29.

26 26. Plaintiff Maria De Altonaga is a resident of Hayward, California. Compl. ¶ 31.

1 27. Defendant LICS is incorporated in Texas and its principal place of business is
 2 Addison, Texas. Compl. ¶ 34.

3 28. Because Plaintiffs Scott Hoffman, Barry Blisten, Deann Fallas, Gerry Oxx,
 4 Damon Stokes, Susan Strozewski, Sarah White, and Maria De Altonaga are citizens of California
 5 and LICS is a citizen of Texas, this is a putative class action in which “any member of a class of
 6 plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).
 7 Diversity of citizenship accordingly exists between the parties.

8 **D. The Amount In Controversy Exceeds \$5,000,000**

9 29. “In any class action, the claims of the individual class members shall
 10 be aggregated to determine whether the matter in controversy exceeds the sum or value of
 11 \$5,000,000, exclusive of interest and costs.” *See* 28 U.S.C. § 1332(d)(6). “The amount in
 12 controversy is simply an estimate of the total amount in dispute, not a prospective assessment of
 13 defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).

14 30. Plaintiffs seek to recover restitution, attorneys’ fees and costs, and equitable
 15 relief. Compl. at 31.

16 31. Plaintiffs allege that over \$10,000,000 is in controversy. They allege that LICS
 17 “charged teachers millions of dollars in undisclosed…fees” and “the harm caused by [LICS’s]
 18 business practices” involved “skimming tens of millions of dollars from the retirement savings”
 19 of public educators. Compl. ¶¶ 1, 149.

20 32. While LICS vigorously denies liability, LICS’s records indicate, consistent with
 21 the complaint, that over \$5,000,000 is in controversy.

22 33. Plaintiffs also seek injunctive relief (Compl. ¶¶ 16, 132), which would impose an
 23 additional financial burden on LICS. Plaintiffs also seek attorneys’ fees (*id.* at ¶ 154), which in a
 24 class action can run well into millions of dollars.

25 34. Thus, the amount in controversy requirement for removal under CAFA is
 26 satisfied.

OTHER PROCEDURAL MATTERS

35. Promptly upon its filing, a true copy of this Notice of Removal will be provided to all adverse parties pursuant to 28 U.S.C. § 1446(d). Pursuant to Federal Rule of Civil Procedure 5(d), LICS will file with this Court a Certificate of Service of notice to the adverse party of removal to federal court.

36. Upon the filing of this Notice of Removal, LICS will promptly file a Notification of Filing of Notice of Removal with the Clerk of the Superior Court of California, County of Santa Clara, in accordance with 28 U.S.C. § 1446(d).

37. By filing this Notice of Removal, LICS does not waive any defenses that may be available to it, including without limitation any defenses relating to service, process, and jurisdiction, and does not concede that the allegations in the complaint state a valid claim under any applicable law. *See Wabash W. Ry. v. Brow*, 164 U.S. 271, 278 (1896) (holding removal to federal court does not waive personal jurisdiction defense); *see also Fields v. Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 300-301 (9th Cir. 1986) (dismissing removed federal action for lack of personal jurisdiction); *Webb v. Sitzes*, 82 F.3d 424 (9th Cir. 1996) (“The district court properly held that the motion to remove did not waive the objection to personal jurisdiction.”).

38. The exceptions to removal contained in 28 U.S.C. § 1332(d)(3) & (4) do not apply because no defendant is a citizen of California.

39. LICS reserves the right to submit additional factual support, evidence, and affidavits to support the basis for federal jurisdiction as necessary at the appropriate time.

NOTICE TO STATE COURT AND PLAINTIFFS

Counsel for LICS certifies that pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal will be filed with the Clerk of the Superior Court of California, County of Santa Clara, and given to Plaintiffs' counsel promptly. WHEREFORE, the case now pending in the Superior Court of California, County of Santa Clara, Case No. 23CV418236, is hereby removed to the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1332, 1441, and 1453.

1 Respectfully submitted,

2
3 Dated: August 10, 2023

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
/s/ *Jessica Lewis*
JESSICA LEWIS (SBN 302467)
jessica.lewis@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
One Front Street, Suite 3500
San Francisco, CA 94111
Telephone: (628) 235-1160
Facsimile: (628) 235-1001

TIMOTHY PERLA (*pro hac vice* pending)
timothy.perla@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

*Attorneys for Defendant
Life Insurance Company of the Southwest*